

ADDRESS
OF
EDWARD J. PHELPS,
PRESIDENT OF THE ASSOCIATION.

GENTLEMEN OF THE ASSOCIATION:—Your Constitution, which requires of your president to “communicate the noteworthy changes in statute law” since our last meeting, has imposed upon me a dry subject, and one I have not found easy to deal with. Only five states (Maryland, Virginia, Louisiana, Iowa, and Kentucky) have been so fortunate as to have escaped a meeting of their legislature during the past year. One other (California) has been happily relieved from the usual consequences of such a session, by its law-makers becoming so deeply involved in controversy among themselves as to be unable to agree upon any other legislation. The modern invention of the “dead-lock” is not without its advantages.

From each of the other states comes an octavo volume of fresh enactments, on an infinite variety of subjects. To digest all this incongruous material, to classify and present it here within any reasonable limits, so as to render the result even intelligible, not to say interesting, is difficult. But for the felicitous manner in which it has been accomplished by my distinguished predecessors in office, I should have thought it impossible. I am compelled to pass over most of it hastily, and to dismiss with mere mention many topics, which if time allowed, would invite more careful statement, and more extended comment.

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I should add also, in explanation of inaccuracies that may be hereafter apparent, that while by the courtesy of members I have been furnished with all available information, the sessions of various legislatures have been protracted to so recent a period, that from two states (New Hampshire and Indiana) I have been unable to obtain any report, and from several others only abstracts and titles of their session laws, at a late period.

In Federal legislation but two acts of special interest are to be noticed.

The first grants lands to the territories of Dakota, Montana, Arizona, Idaho, and Wyoming, for the founding of future universities. It is not for us, nor for our generation, to anticipate the advantages that will be derived by this forethought, to the great states that will some day surround the solitudes thus appropriated.

The other act referred to, provides for the registration and protection of trade-marks. It was enacted in consequence of the former law on the subject being held unconstitutional.

This statute limits the right of registration under it, to those trade-marks used in commerce with foreign nations which afford similar privileges to citizens of the United States, leaving other trade-marks to the protection of the general rules of law, or to state enactments.

Turning over the mass of state legislation, while some of it is useless, some of it ill-advised, if not positively pernicious, and some of it probably invalid, there is still a considerable portion that is undoubtedly beneficial, and that shows in some directions a real advance. It is pleasant to advert first to that which is most salutary.

Various statutes have been passed for the better protection of human life. Illinois, Arkansas, Delaware, and South Carolina have prohibited the carrying of concealed deadly weapons on the person, and Pennsylvania the sale of them and of gunpowder to minors. In Nebraska cities are authorized to pre-

vent the carrying of concealed weapons ; a provision of questionable validity.

In Arkansas, West Virginia, Missouri, and Kentucky, acts regulating the sale of poisons, and requiring them to be conspicuously marked, have been adopted.

Laws restricting the business of the dealing out of medicines to those licensed for that purpose, upon suitable qualifications, have been enacted in Illinois, West Virginia, Missouri, Connecticut, and Wisconsin.

Provisions regulating the storage of inflammable oils have been adopted in Wisconsin and Arkansas.

In Connecticut and Maine, fire escapes have been required to be attached to manufactories. And in Missouri, Ohio, and Tennessee statutes for the protection of miners against explosions have been passed.

In Ohio and Michigan, provision has been made for inspection of buildings, and in the latter state, of coal oils, with a view to their safety.

In Vermont, a protection against danger from the bursting of water reservoirs has been devised, under which application to judicial authority for a survey of such structures, and repair if found necessary, may be made by inhabitants of the vicinity, when danger is apprehended.

Various provisions affecting the safety of passenger transportation on railways have been adopted.

In Vermont, requiring brakes on all passenger trains that can be operated from the engine ; prescribing the size of bridges, and the management of trains at crossings.

In Massachusetts, prohibiting the employment of color-blind persons in any position requiring power to distinguish color signals, and providing for the examination of those so employed. And giving an action to the representatives, in case of death resulting from negligence of a railway company.

In Rhode Island, prohibiting the lighting of cars with certain inflammable oils.

In Missouri, forbidding the transportation of nitro-glycerine, and in Michigan that of inflammable oils, on any train used for the conveyance of passengers.

In Michigan, requiring all such trains to be provided with axes, saws, and lifting jacks, and making provision for the protection of the lives of employees.

In Vermont, forbidding the leaving of hand cars, and other objects calculated to frighten horses, in the highway near railroad crossings.

In Tennessee, a supervision of roads and rolling stock in matters affecting the safety of passengers has been given to the railroad commissioners.

The advance in the direction of adequate laws against murder has not been great.

South Carolina has passed an act against duelling, and has also provided that where a person dies in one county in consequence of a homicidal injury received in another, prosecution may be instituted in either.

In Texas, the form of all indictments has been greatly simplified.

Vermont has adopted a provision obviating the necessity of describing in an indictment for murder the precise means by which it was committed.

And in Mississippi, a change of venue in criminal cases is authorized on motion of the state.

In Texas, it is enacted that intoxication or insanity from excessive use of ardent spirits shall not be a defence in indictments for crime, but may be given in evidence to reduce the degree of murder.

On the other hand, the facilities for the escape of assassins have been further enlarged in Michigan, Mississippi, West Virginia, and New Jersey, by making them witnesses in their own behalf; and in the latter state, by allowing wives to testify in criminal cases in defence of their husbands. All experience proves that criminals will perjure themselves to avoid conviction.

tion, and that women of a certain class will habitually swear falsely to protect their husbands; and the influence over the average jury of an attractive or adroit woman is proverbial, especially in causes where sympathy can be excited.

The authors of such provisions lose sight of the salutary principle of the common law, that requires the sources of evidence laid before a jury to be free from suspicion, so that the testimony shall be at least more likely to be true than false.

There is no subject within the domain of legislation, in my judgment, in which improvement is so needed as in the law against murder. The practical immunity that crime enjoys in some sections of the country, and the delay, difficulty, and uncertainty in enforcing the law almost everywhere, is a reproach to our civilization. Efforts to save assassins from punishment are so strenuous, the chances of escape so numerous, and the proceedings so protracted, that the law has few terrors for those disposed to violate it.

It is time to be rid of the mischievous idea, that in proportion to the heinousness of crime the chance of escape from the consequences should be increased. The proposition should be reversed. That all reasonable safeguards should surround even possible innocence, lawyers will be foremost to maintain. But we need a system of criminal justice that shall secure the prompt and certain punishment of those who can be legally proved guilty of murder, and a curtailment of that complicated machinery which affords no additional protection to the innocent, and is a constant means of escape for the guilty.

Various regulations for the protection of public health have been adopted in different states. The most prominent and the most useful are those regulating the practice of medicine and surgery, adopted in the states of Pennsylvania, Arkansas, West Virginia, Nebraska, Florida, Connecticut, Ohio, and Wisconsin. They restrict the practice to those, who upon evidence of suitable qualifications, are licensed by a board of competent examiners, or are graduates of regular medical schools. Such was

previously the law in a few other states. It is to be hoped that the day is not far off, when every state will prohibit the destruction of life and health by the practice of quackery.

In Ohio, penalties against fraudulent medical diplomas have been enacted.

Laws requiring examination and license for the practice of dentistry have been adopted in Missouri and West Virginia.

In Pennsylvania, Arkansas, Michigan, and West Virginia, provision has been made for state boards of health, with jurisdiction to deal with all matters affecting the origin and spread of disease.

In New York, a public night medical service for the city of Brooklyn has been provided.

Rhode Island has prohibited the attendance of pupils in the public schools who have not been vaccinated.

Wisconsin has passed an act to prevent the spread of infectious diseases. It prohibits the transportation into any town of the body of a deceased person, unless accompanied by the certificate of a physician stating the cause of death; and where the disease is contagious, a permit of the board of health, and a sworn declaration that the body is enclosed in an air-tight coffin, or encased with disinfectants. It further makes liable to a penalty, any person who knowingly laboring under any contagious disease shall wilfully enter, or who shall cause a child so affected to enter, a public place or conveyance, or subject others to the danger of contracting his disease, or shall wilfully subject others to the danger of contracting disease from a dead body.

Many states have adopted laws against the adulteration of food, drinks, or medicines, general, or referring to particular articles. And in New York active measures have been taken to enforce the law.

The fraudulent sale of oleomargarine for butter, in several of these states is the subject of special prohibitions and penalties; though in Pennsylvania and New York bills for that purpose were vetoed by the governor.

New York has enacted a statute so humane that it ought not to have been necessary, requiring the proprietors of stores to provide seats for the use of their shopwomen.

Maine has made a small advance, though better than nothing, in the matter of enabling physicians to procure necessary subjects for dissection without violating the law. It provides that the body of any person who so consents during his life, may be delivered to a physician for the advancement of anatomical science after his death, unless some kindred makes objection. And that the body of any person which shall not be claimed by his family for burial, reasonable notice being given for that purpose, shall be subject to the use of the medical school of Maine. A subsequent act, however, requires that all such bodies shall be embalmed and preserved without dissection for thirty days.

Ohio and Michigan have passed more effectual laws, under which the bodies of all persons dying in any institution supported in whole or in part at the public expense, or who must be buried at the public expense, shall be delivered for dissection, unless claimed by kindred : in Ohio on the application of a professor of anatomy in any college in the state empowered to teach anatomy, and in Michigan, to the same officer in the state university.

In behalf of public morals various efforts, more or less efficient, have been made.

Laws against gambling, pool selling, lotteries, etc., have been enacted in West Virginia, Missouri, Colorado, Rhode Island, and Ohio.

Acts for the suppression of obscene literature have been passed in Missouri. And a law in Michigan prohibiting its sale to minors, but leaving it free to be distributed among those supposed to be old enough to profit by it. Doubtless these laws will be regarded as unconstitutional, by the excellent society which exerts itself in behalf of the diffusion of obscenity ; but it is fair to expect that courts of justice will continue to differ with these philanthropists, on this question as on many others.

Rhode Island has also done something in the same general direction, by an act forbidding the use of their state house except for legislative purposes; thus suppressing in that state the travelling orators who are accustomed to ventilate their theories in legislative halls.

In Massachusetts, an act authorizes the courts, in their discretion, to exclude minors from court rooms.

The laws relative to the trade in intoxicating liquors have occupied a large and increasing share of the attention of legislatures. Statutes on this subject have been passed in Arkansas, Alabama, Nebraska, South Carolina, Rhode Island, Connecticut, Wisconsin, North Carolina, Kansas, and Vermont. Time forbids a comparison of their merits, or even a statement of their details, which vary very materially. Some are violent, others moderate and salutary.

The law in Alabama applies to the whole state, "except Blount's Springs." Why this sanctuary for the thirsty against the vengeance of the law was created, is not stated. Perhaps it is not far from the capital.

In Michigan and Nebraska, the traffic is legalized under rigid restrictions, to any one who executes a satisfactory bond to observe the requirements of the law. This disposition of the subject is, so far as I know, novel, but is not without argument in its favor. In Nebraska a license fee of \$1,000 is also required.

In Wisconsin and Nebraska, statutes have been passed against "treating" at bars and saloons. In Wisconsin, the act has been held unconstitutional by the supreme court, perhaps as being in contravention of inalienable rights.

That the liquor traffic needs to be regulated by law, is not to be doubted. The evils arising from intemperance are unhappily too well known. That barkeepers, as such, have but few rights that are entitled to respect, will not probably be denied. But how far, after all, intemperate legislation will succeed in the suppression of intemperate drinking, is a question that still remains to be answered. That extreme laws on

the subject, however fruitful in litigation, ill-blood, and expense, do materially diminish the consumption of liquor, has not yet been proved. The precedent they generally establish, of a penal law, only spasmodically and occasionally enforced, and the habitual violation of which is justified by a considerable portion of the community, may well be deprecated. The use of stimulants has been almost universal in the history of the world, and is not likely to be terminated by legislation. Milder means may probably be found as effectual in the suppression of intemperance, as of other vices.

The subject of what is commonly called "woman's rights" has not failed to receive even more than its usual attention.

In Nebraska, a constitutional amendment extending to women the full right of suffrage has been submitted by the legislature to the people, but has not yet been voted on.

In Vermont, women have been made eligible to school offices, and entitled to vote in school elections, and are empowered to assign life insurances effected in their favor by their husbands. And a married woman carrying on business in her own name, is made capable of suing and being sued in the same manner as if unmarried; executions to be levied on her separate property.

In Wisconsin, a married woman is authorized to sue in her own name for personal injuries received, and to have and control the damages recovered, as her separate property.

In Rhode Island, her right of choice has been enlarged by the repeal of the restriction against intermarriage with negroes.

In Missouri, the wife is authorized to file her claim to the land occupied by her husband as a homestead—not exceeding \$1,500 in value—after which the husband is debarred from disposing of it in any way whatever, any sale or mortgage being declared void *in toto*, unless concurred in by the wife.

In Connecticut, it has been enacted that a husband neglecting to support his wife shall be sent to the workhouse.

In Colorado, failure by the husband to provide for the wife for the period of one year entitles her to a divorce.

In New Jersey and Mississippi, she is made a witness in her own behalf in proceedings for divorce.

By a recent act in Mississippi, married women are relieved from all the disabilities of matrimony, and are placed on the same footing in all respects as if unmarried, so far as concerns property, contracts, business, and the right to sue and be sued. The woman is made entirely independent of her husband, may contract with him, sue him and be sued by him, and may testify against him in her own behalf. They cannot, however, sue each other for services rendered, which seems to be the only exception that mars the symmetry of the act.

While something has been done to increase, nothing has been done, so far as I have observed, to diminish the facilities or the causes for divorce, or to indicate what proceeding, under American law, shall be sufficient to constitute a marriage. Though in Missouri and Rhode Island, marriage licenses have been made requisite, under a penalty, not against the party, but against the officiating clergyman or magistrate.

In Michigan, it has been enacted that an illegitimate child may be legitimated, not only by the subsequent marriage of his parents, but also by a writing executed by the father and recorded; thus putting it in his power to place his illegitimate children on the same footing with those born to him in wedlock.

In Missouri, a feeble blow has been struck in behalf of the long-neglected rights of man, by a statute which exempts the husband from liability for the debts of the wife, contracted before marriage.

Modern agitation and modern legislation on this subject, appear to proceed upon the theory that the husband is the antagonist against whom the wife chiefly needs protection. They tend to deprive marriage of its old-fashioned sacredness, its community of interest, its indissoluble obligation. Among a certain class it is becoming a condition of "armed neutrality," of which the mottoes are, "In time of peace prepare for war." "Millions for defence, not one cent for tribute." A sort of qualified partnership, contracted without solemnity, dis-

solved without cause, barren of its natural offspring, and fruitful only in quarrel and dispute. Appeals from the decrees of the Almighty are rarely successful. The most enterprising lawyer might hesitate to advise them. It may probably turn out, after due experience, that the welfare of woman is not promoted, nor her character elevated, by efforts to transpose her sex ; nor by substituting between her and her husband the protection of ill-contrived and hostile statutes, for that which ought to be afforded by the consecration of religion, and the honor and affection of manhood.

The subject of education has considerably engaged the attention of the legislatures.

A very elaborate plan of public instruction has been established in West Virginia, which includes the West Virginia University, a state normal school with several branches, and a complete system of free common and high schools. It disposes of the vexed question of text-books, by specifying in the act those that are to be used in the common schools, and adding a penalty for the introduction of any others.

Systems less elaborate, but quite complete, have been adopted in Nebraska and in Michigan.

In Minnesota, an act has been passed for the establishment of public schools for higher education, embracing all branches requisite for admission to the University of Minnesota ; and also an act for increasing the facilities of the normal schools. A third act requires "that in all schools instruction in the elements of social and moral science shall be given, including industry, order, economy, punctuality, patience, self-denial, health, purity, temperance, cleanliness, honesty, truth, politeness, peace, fidelity, philanthropy, patriotism, self-respect, hope, perseverance, cheerfulness, courage, self-reliance, gratitude, pity, mercy, kindness, conscience, reflection, and the will. Oral lessons upon one of these topics to be given every day, and the pupils required to furnish illustrations of the same upon the following morning." If a high degree of proficiency

in all these virtues shall be obtained by the pupils of the schools of Minnesota, it will be a good state to live in when they grow up.

In Massachusetts, an act has been passed providing for the introduction into the public schools, of calisthenic and gymnastic exercises and military drill.

Missouri, Nebraska, and Connecticut have passed acts empowering cities to establish libraries at the public expense; a somewhat questionable, however beneficial, exercise of municipal power.

In Michigan, a recent act requires the establishment in every organized township, and likewise in every school district in which a two-thirds vote is given in favor of it, of public libraries, to be maintained by taxation. The state board of education to designate and contract for books, and the municipal authorities to select from the list so designated.

In Arkansas, a joint resolution has been passed, declaring the true pronunciation of the name of the state to be "*Arkansaw*," instead of "*Arkansas*."

In Ohio, it has been provided that where the parents of any minor children shall neglect to support them, habitually ill-treat them, or allow them to engage in begging, the children may be taken from the parents and placed in a suitable orphan asylum, children's home, or with some benevolent society.

No state appears to have dealt more liberally with the subject of education and charity, than Kansas. Aside from an elaborate common and normal school system, adopted at the last session, provision is made by annual legislative appropriation for a state university, an agricultural college, a reform school, the education of the blind, of the deaf and dumb, and for the support of asylums for the insane, for idiots and imbeciles, for orphans, and for friendless women.

In Alabama, a normal school for colored teachers has been provided for by law. In West Virginia, provision has been made for the education in separate schools of colored persons

between the ages of six and twenty-one. In Pennsylvania, all distinction on account of race or color in the public schools has been abolished.

Of the necessity for public education, and the benefits of the best attainable education, there can be no two opinions. What is, however, the best attainable education for the mass of mankind, may be another question. Whether the effort to carry common school instruction up to the standard adopted in some states will result in the real benefit of the average pupil, or whether it will tend to disqualify him for the state of life to which it has pleased God to call him, without qualifying him for a better one, may admit of a difference of opinion. And how far the public can be required to defray the expense of higher education, even to those to whom it is undoubtedly beneficial, is a point, that in the present rapid increase of municipal expenses of every description, and the consequent increase of taxation, will undoubtedly require attention. That there must be some limit in this direction is clear. It may be that it will be necessary to find it in the plain education that is best adapted to the plain man.

The question of the true limitation of the powers of municipal corporations, is assuming very great importance. Various legislation during the past year brings it into prominent view, and may probably give rise to serious discussion.

The Ohio idea on this subject, (as on some others) is considerably in advance of the views that have hitherto prevailed. A large number of acts have been passed there, empowering counties, cities, towns, and villages to engage in various enterprises expected to be indirectly beneficial: to build railroads, construct machine shops, glass houses, buildings for manufacturing purposes, infirmaries, children's homes, soldiers' monuments, etc.; to purchase toll roads; and to raise money for these purposes by the issue of bonds of the municipality. Many of these acts, while purporting to be general, really limit the authority given to particular towns; it being enacted that any town having, by the census of 1870, a population of a

certain exact number, is authorized, etc., etc. No other town in the state than the one intended having that exact population. And the secretary, in printing the acts, designates at the head of each the town to which it applies. If this is designed as an evasion of any constitutional restriction upon the power of the legislature to grant such authority by other than general laws, its success must be doubtful. Most of the acts authorizing the construction of railroads have already been declared unconstitutional by the Supreme Court of Ohio. It is but just to that tribunal, to anticipate that various other statutes in the same book will meet the same fate.

That the objects contemplated in these acts may be more or less beneficial, indirectly, to the municipalities, may be admitted. Many things are desirable to cities and towns, as to individuals, if their cost can be afforded. But there must be a termination somewhere to the power of the majority to create such benefits at the expense of the minority. And if the line that separates what is reasonably necessary for municipal purposes from what is only desirable, is once passed, it is not easy to see where another can be drawn. If there be no limit, an early bankruptcy must await many municipalities, since the majority of votes and the majority of property are not usually found in the same hands.

That this is not an idle foreboding has been already shown. Tennessee has passed an act for settling the indebtedness of the bankrupt, and, in the language of the act, "extinct" city of Memphis, at thirty-three cents on the dollar. And also a joint resolution providing for a board to devise provisions for the surrender of the charters and the compromise of the debts of other embarrassed cities. Florida has passed a similar act. The well-known financial condition of the city of Elizabeth, in New Jersey, the inability of various western towns to meet their liabilities by any practicable rate of taxation, and the insolvency of at least one rural town in Vermont, where the value of the entire real estate within its limits was found not

equal to its indebtedness, show that municipal bankruptcy is quite possible, and is not confined to one locality.

The subject of possible excessive taxation did not, however, escape the attention of the legislature of Ohio, which passed an act providing that the aggregate of taxes in any town containing, by the census of 1870, a population of 2,729, "shall not exceed in any one year $9\frac{5}{16}$ mills."

The power of municipalities to aid in the construction of railroads has been too generally affirmed by courts of this country to be now open to question. But the results of its exercise have been so frequently disastrous, that it is to be regretted that the early decision of the Supreme Court of Michigan, denying the power, had not become the general law of the land. In various states amendments of the constitution have been within a few years resorted to, in order to put an end to such enterprises by municipalities.

The Ohio legislature, and that of Nebraska, also passed acts authorizing the appropriation by municipalities of any private property for the use of the corporation, irrespective of the necessity, ascertained judicially or otherwise, which has hitherto been regarded as a condition precedent to the taking of private property for public use.

A further illustration of the views of the former legislature on the subject of legislative authority, is found in an act which sets forth that certain named sureties on an official bond have paid a liability incurred by the principal, under such circumstances as to give them no right of action for contribution against their co-sureties, and proceeds to confer such right of action upon them; thus giving by statute to one man a right of action against another, which did not otherwise exist. If this power can be supported, it is probable that many applications for its exercise will arise.

In Missouri, an act has been passed, making cities liable for the destruction of private property by mobs, and making members of the mob liable to the city for the damages sustained.

In Vermont, the statute which has existed there, as in most of the New England states, from a very early period, making towns liable for special injuries sustained in consequence of defects in the highways, has been repealed. The repeal was induced by the many exaggerated and fraudulent claims of that character that towns were subjected to.

In Massachusetts, an excellent provision to exempt mortgage property from double taxation has been adopted, under which the taxation of mortgaged real estate is apportioned in the town where the land is situated, between the mortgagor and the mortgagee, the latter being taxed to the amount of his mortgage as for an ownership in the land itself.

In Vermont, a very stringent tax law has been adopted, requiring a minute disclosure under oath of all property, under penalty of having the list doubled by the assessors. The immediate result has been a very large increase of the assessed property of the state. Whether it will turn out that the increase is permanent, and whether the rate of taxation will be ultimately thereby diminished, are questions that remain to be determined. Experience has usually shown that severe taxation of that species of property which can readily be withdrawn from the jurisdiction, leads in the end to the flight of the property, rather than to any permanent increase in revenue; and that the rate of taxation is not in the long run reduced by an increase in the amount of property assessed.

In New York, vessels registered in the port of New York, owned by American citizens or by New York corporations, engaged in ocean commerce between American and foreign ports, are exempted from taxation. And such corporations, all of whose vessels are so engaged, are exempted from all taxation for fifteen years.

Suits by taxpayers have been authorized in New York against municipal officers, to prevent illegal official acts, waste of or injury to public funds or property, the allowance of fraudulent claims, and to open collusive judgments; and colluding officials may be adjudged personally responsible for claims

fraudulently allowed; all municipal books, vouchers, etc., etc., to be public records, open to the inspection of the taxpayers.

Tennessee has passed an act to pay off her state debt by the issue of a long bond at three per cent. for the principal and arrears of interest.

Minnesota has also provided for the tender to her creditors, holding the railroad bonds of that state, of fifty per cent. of their claims, by the issue of new bonds, provided the other half of the debt be released. The act is subject to the opinion of the Supreme Court as to its constitutional validity; and if the opinion should be such as to require it, the act is to be submitted to the people for ratification. Such a forced compromise of the debts of a sovereign and prosperous state would be an ineffaceable blot upon her fame, through all the great and growing future before her. Let us hope that this step is but an instalment toward the final payment of the uttermost farthing.

The important field of railway transportation, so fertile in dispute, has produced the usual annual crop of legislation.

Nebraska has passed an act providing that no railroad company shall charge higher rates on freight than was charged on the 1st of November, 1880, nor a greater sum for any specific distance than it demands for a greater distance; or grant to any person, upon the transportation of freight, any secret rate, drawback, or undue advantage; or charge for the same service to any person a greater or less sum than is charged to any other person; and that equal terms, facilities, and accommodations for transportation and handling of freight, and for the use of buildings and grounds, shall be given to all persons.

A joint resolution has also been adopted in the same state, requesting Congress to enact laws against unjust discrimination and excessive charges by railroads, which it is declared are "fast becoming powerful monopolies, and are being operated in many cases to the detriment of our citizens, who are in a large majority, by location, compelled to patronize points not competing."

Similar joint resolutions have been passed in West Virginia and Tennessee.

In Maine, an act has been passed, prohibiting railroads from demanding or receiving of any railroad higher rates of freight or fare than it demands or receives of any other railroad; requiring equal advantages to be given by all railroads to all others, and extending the provisions of previous general statutes on the subject.

In Rhode Island, it has been enacted that no greater fare shall be collected of passengers in the cars than is charged at the ticket office.

In Missouri, an act requiring every railroad to maintain at every intersection with any other railroad a depot and waiting rooms, to be kept warm, lighted, and open for the use of passengers. To give public notice of the regular time of starting and running its cars; to furnish sufficient accommodation for the transportation of all passengers, baggage, mails, and express freight that shall be offered for transportation at the place of starting, at the junction of other roads, and at the several stopping places; to stop all passenger trains at the junction or intersection of other roads long enough to allow the transfer of passengers, etc., from connecting trains, and to receive all passengers and freight from connecting or intersecting trains. They are further required, at all towns having a population of 200, or more, to maintain switches and freight houses for the receipt and delivery of freight, and to stop at least one train daily thereat to receive and unload freight. And to receive and deliver all freight at the crossings and junctions of all other intersecting railroads, canals, and navigable rivers.

Other acts in the same state require the counting by railroad agents of all animals shipped as freight, and upon neglect or refusal, the railroad company are made liable for the number of animals specified in the bill of lading, according to the shipper's count. That whenever any shipper shall hire cars from a company, he shall have the right to put into the cars two or more species of live stock, or different kinds of grain, or dif-

ferent articles of commerce, without any greater price than is charged when only one species of such freight is shipped. And that all railroad companies shall furnish at all stations a sufficient number of double-deck cars for the shipment of sheep, to supply the demand, and shall allow shippers to load both decks with sheep to the extent of 20,000 pounds, at no greater rate for the double-deck car than the legal rate of freight allowed for stock.

A recent act in Michigan requires that grain transported by rail shall be delivered at the place of business of consignees when situated upon the railroad track; and that the companies shall allow connecting tracks to be laid by those requiring them.

In Connecticut, railroads are made liable for fires communicated by their locomotives.

In Wisconsin, Maine, and Nebraska, acts have been passed making railroad companies liable for the wages due from contractors to workmen in their employ upon the railroad. And in Nebraska a lien is given upon the road for such services, continuing for two years.

In Maine, it has been enacted that buildings of railroad corporations, on all lands and fixtures outside of the located right of way, shall be subject to taxation by the cities and towns in which they are situated, and in lieu of all other taxes, every corporation is required to pay to the state an annual excise tax, calculated upon its gross receipts, which is divided by the state treasurer among the cities and towns proportionately.

In Colorado, it is provided that if payment of any claim against a railroad company for overcharge or damages is refused, and suit upon it is brought, the plaintiff, if he recovers more than was tendered him, shall also recover a penalty of \$100 for each month since payment was demanded.

In Texas, baggage smashing has been made a misdemeanor.

In Alabama, an elaborate statute for the regulation of railways has been passed, containing some very rigid provisions. More than a just compensation is declared extortion and pun-

ished by fine, and all discrimination between freighters is prohibited. Whether such extortion or discrimination has taken place, is made a question for a jury. Approval of rates by the railroad commissioners is only *prima facie* evidence that the rates are not extortionate, but is sufficient to exempt from the penalty. The tariff of freight is required to be published; and any rebate or reduction in favor of any individual is made a misdemeanor as to both parties, and punishable by fine. A railroad commission of three is established, to be appointed by the governor, out of nine nominated by the senate. The commission is to revise all tariffs, to hear complaints against tariffs approved, and to require changes therein. The commissioners are to examine the books of the company on the application of one-fiftieth of shareholders, or an equal amount of bondholders, and may publish the result.

On the other hand, in Arkansas, Nebraska, Missouri, and Minnesota almost unlimited powers have been given to railroads for the purpose of consolidating with, purchasing, leasing, or forming connections with other railroads in those states; evincing as much of a disposition to create powerful monopolies, as is found in some other states to suppress them.

In New Jersey, railroads have been authorized to construct, acquire, and operate lines of telegraph for commercial and public uses.

Various regulations affecting public safety on railroads have been before mentioned.

This whole subject is fraught with infinite, and it is to be feared, increasing difficulty. The railways, on the one hand, have become indispensable to the transaction of every description of business. On the other hand, their power, their vast accumulation of capital and influence, the disregard some of them have occasionally manifested for the public convenience, and the irritating discriminations they have imposed, have furnished facile material to the demagogue with which to inflame public sentiment against them.

It is easy to see that this controversy, on which we are just entering, may have very serious results. They are to be obviated, if at all, as the mischiefs of most quarrels are, by mutual forbearance. It is for the public to consider the great benefits derived from these corporations, and their fair title to a remuneration commensurate with the large capital employed and the great risk run, and to remember that any serious embarrassments of those interests must react with tenfold force upon the business of the country. And it is for railroad managers, on their side, to bear in mind, that while the public is a patient animal, slow to be roused, and unwieldy in getting into action, its vengeance is very dangerous, and quite likely to proceed to unreasonable extremes. They should beware of grasping at too much, either in money or in power, and avoid especially carrying on a competition with rival routes by means calculated to irritate the public. Moderation, justice, and caution may be found their best protection and their truest interest.

On the subject of agriculture, various legislation has taken place. Efficient laws have been adopted in Illinois, Vermont, Kansas, Delaware, and Tennessee to prevent the spread of contagious diseases among cattle. The power asserted in some of them, to prevent importation, or transportation of cattle from infected districts; to slaughter those that are infected or have been exposed, and to place infected districts under quarantine, is perhaps a strong, but undoubtedly constitutional and beneficial exercise of the power of the government over private property in cases of necessity.

In Michigan, similar provision has been made for the destruction of infected bees, by order of commissioners to be appointed on petition by the judges of probate. And also for the prevention, in the same manner, of the spread of certain diseases in fruit trees.

Provisions adopted in Illinois, Nebraska, Michigan, and Maine for the drainage of land by the construction of drains by the public authorities, at the instance of petitioners in interest,

across the lands, and at the expense of those made defendants in such proceedings, may perhaps be sustained on the score of public necessity, but may not be entirely free from question in respect to their validity.

In South Carolina, considerable inducements in encouragement of immigration have been provided, by returning to immigrants all taxes collected of them, for five years after taking up their residence in the state, except a two mill school tax, but not exceeding in the whole the sum of \$1,500. And a very liberal homestead act has been adopted in the same state, under an amendment of the constitution for that purpose, by which \$1,000 in land and \$500 in personal property, to each head of a family, are exempted from mean or final process, except upon obligations contracted for the purchase of the same.

A homestead law has also been adopted in Missouri, exempting a homestead to the value of \$1,500.

In Wisconsin, the stealing of standing timber has been made larceny.

In Minnesota and Colorado, acts to encourage the planting of timber have been adopted.

In Michigan, it is provided that for the planting of shade trees or water troughs in the highway, an allowance out of his taxes shall be made to the land owner; and that shade trees in the highway shall not be cut down without the owner's consent, except in cases of necessity. In the same state a joint resolution was adopted requesting the governor to designate a day in each year, to be known as "Arbor Day," to be devoted to the planting of trees.

In Colorado, an act providing means of irrigation has been passed.

In Ohio, a statute provides for the punishment of fraud in the sale of fertilizers.

In New York, a state entomologist is provided for, whose duty it is to give attention to insects destructive to agriculture.

In New Jersey and Michigan, bounties have been authorized for the raising of sugar, jute, flax, hemp, etc.

The queer vagaries of legislation would furnish of themselves an entertaining chapter, if amusement were the object of this dull paper. Some of them have been already mentioned. In one state it is provided, that in case of trespass upon lands, the plaintiff may waive the tort and sue in *assumpsit*. What cause of action it is supposed would be left, after "waiving the tort," and why the action should be *assumpsit*, in preference to the equally appropriate remedies of *quo warranto*, or covenant broken, is not apparent. Perhaps the law-makers thought the action could be sustained upon the implied promise in the original social compact, that every man should refrain from forcible injury to his neighbor. Or possibly some jurist had commenced an action of *assumpsit* to recover for a trespass, and a special statute was necessary to overcome the prejudice of the court against it.

The criminal law of the same state has been improved, by conferring on justices of the peace the power to punish those who shall be guilty of being "disorderly persons." What manner or degree of delinquency would render one a "disorderly person" is not pointed out in the act, and is wisely left to the discretion of the justices. Probably an "unfit and desartless man" would come clearly within the statute.

In another state, a special statute relieves one P. H. from all the disabilities of non-age. How far advanced in life the young gentleman had become, who is thus released from the thralldom of parental control and from the rules of law affecting other minors, I have not been able to learn. He is doubtless the pioneer in a new enterprise in social reform, in behalf of the rights of infants, of which we may hear more hereafter.

Those interested in the "Apocrypha" will be pleased to learn, that in one state, provision has been made by law for the erection of "subordinate tents of the Maccabees of the world." In another, a joint resolution sets forth, that certain distinguished citizens and a certain able newspaper correspondent

are about to visit Europe, and requests the governor to issue to them a commission to represent the industries of the state, and to collect information at their own expense. Perhaps the object might be better attained by general acts, conferring on all our distinguished citizens who are about to explore Europe, similar official authority, and thus relieve them while abroad, from the humiliation of private life.

In the department of general jurisprudence, various alterations have been made, many of them departures of questionable advantage from the old common law.

In West Virginia and Michigan, parties in civil actions are made witnesses; and in the former state, confessions to clergymen and physicians are protected from disclosure. This ought to be everywhere the law—at least as far as physicians are concerned.

In Connecticut, declarations of deceased persons have been made evidence in actions by or against their representatives.

In Vermont and Michigan, the records of the United States Signal Service have been made admissible in evidence. And in Wisconsin, comparison of handwriting in question with other proved handwriting of a party, is allowed to be made by the jury.

In Michigan, a new system of the descent of property has been established, too elaborate to be recited here. Its principal changes (among others) from the usual manner of descent, are in giving the widow, where there are no children, a life estate in the whole property, with remainder to the father of the intestate; in postponing the inheritance of the mother to that of the brothers and sisters; and in making the husband the heir of his wife, in default of issue, parents, and collaterals.

In Illinois, it is enacted that in any deed conveying an estate in fee simple, the words "grant, bargain, and sell" shall be adjudged an express covenant of an estate in fee, against encumbrances, and for quiet enjoyment, unless limited by other express words in the deed.

In Michigan, the same effect is given to the word "warrant;" and the word "heirs" in a conveyance is declared not necessary to create an estate of inheritance.

In Mississippi, seals on bonds and other instruments have been dispensed with, and they are made operative, according to the intent of the maker, as fully as if seals were affixed.

In Connecticut, the acquisition of an easement over land by adverse use is prevented, when written notice by the owner of the land, that such right is disputed, is served upon the party using the easement, and recorded.

In Vermont, the insolvency act of 1876, not very intelligible before, has been still further obscured by numerous improvements. The principal value of such enactments appears to be, to point out the necessity of a permanent national bankrupt law.

In Tennessee, special preferences in assignments for the benefit of creditors have been prohibited.

In Massachusetts and Michigan, standard forms of fire policies have been prescribed, and all others precluded.

In New York, it has been enacted that if any state imposes restrictions upon the transactions within its limits, of insurance companies organized under the laws of other states, which are more onerous than those imposed by the laws of the state of New York, the courts of New York shall not entertain a suit upon a policy issued by a company organized under the laws of New York, where the loss occurred, or the life insured terminated, within such state. How far such an act may be open to constitutional objections will remain to be considered, after it shall have been ascertained precisely what it means.

In another act in New York, it is provided that the bond of a corporation organized for the purpose of executing official bonds as surety, may be accepted in such cases.

Good Friday has been made a legal holiday in New York, but a bill to further the cause of religion by legalizing lotteries at church fairs, failed to become a law.

In Michigan, Christmas, Thanksgiving, and fast days, New Year's Day, Washington's Birthday, the Fourth of July, and Decoration Day, are made public holidays.

In New York, hotel accommodations have been rendered more pleasant, by an act providing that no guest shall be excluded therefrom on account of race, creed, or color. Imprecuniosity seems therefore to be the only disqualification in that state, for residence in a hotel. Some limit has, however, been placed on the extent to which a person may lawfully render himself socially disagreeable, by enacting that the use of vitriol, or other corrosive substance for that purpose, shall be felony. In Tennessee, a very marked discrimination has been declared by statute against that class of travellers known as "tramps," under which it would appear that an innkeeper might safely exclude such a guest, no matter how objectionable his race, creed, or color might be. And in Vermont, an act has been passed prescribing the qualifications necessary to constitute a lawful tramp, so as to entitle him to the various advantages provided by statute for those standing in that relation.

In Ohio, liens have been given upon steamboats for supplies, insurance, wharfage, and for damages to the person or property of passengers, or employees, by the captain or any officer. And in Michigan, a lien is given upon logs, timber, posts, ties, and other forest products, in favor of those employed as laborers in getting them out; thus giving another step forward to the American idea, of circumstantial liens, without possession, in favor of one man upon the property of another.

A provision has been made in Ohio and Florida, for limited partnerships, wherein partners are not liable, personally, for the debts of the firm.

In New Jersey, a former law required all indictments to be found within two years after the crime was committed. In 1879 the act was altered by allowing indictments for malfeasance in office to be found within five years after the offence. It has been recently held by the Court of Appeals in New Jersey, that this act, so far as applicable to offences committed before

the passage of the act, and where an indictment was found more than two, and less than five, years after the offence, was an *ex post facto* law, and void.

In Connecticut, it has been provided that judges of the courts shall be paid, in addition to their salary, the expenses incurred in the discharge of their duty, and that they shall not act as referees.

In New York, the salary of a deceased judge of the Supreme Court is to be continued to his widow for the remainder of the official year in which he died.

In Michigan, the judges are required to furnish the reporter with a syllabus of each opinion for publication. And provision is made for the republication of such of the Michigan reports as are out of print. In the same state, a general law for the incorporation of bar associations has been passed.

The subject of admission to the bar has engaged the attention of several legislatures.

In the state of New York, an act suspends for another year the rules for admission of attorneys and counsellors, adopted by the Court of Appeals under the statute of 1877. By those rules, one year's study in a law office was required of graduates of a law school before admission as attorneys, and two years' practice as attorneys before admission as counsellors. The legislature has by annual act ever since their adoption, suspended these rules, thus enabling the graduates of law schools to obtain admission as attorneys and counsellors on production of their diplomas, as was authorized by the law in force prior to 1877.

In Michigan, it has been enacted that any citizen of good moral character, and twenty-one years of age, may be admitted to the bar, upon passing an examination conducted in open court.

This subject is of great and increasing importance. If the high character that has distinguished the American bar is to be maintained in the future, it must be done by keeping up the standard of legal education. It is to be borne in mind, that the demands upon the knowledge and resources of the profession

are far greater than they were fifty years ago. Jurisprudence has a larger learning, and a far wider field, than it had when an able lawyer might pass his life in dealing with the comparatively few and simple topics of his own immediate locality.

I hope the day is not far distant when a regular course of study at a law school will be made indispensable to admission to the bar. A corresponding course is already necessary to the physician, if he desires to claim regular standing among his brethren, and is fast becoming a legal requisite to a license to practice medicine at all. It is as reasonable to require it of one profession as of the other. Existing law schools furnish ample facilities. Others can readily be created as fast as they are required. The subject might be much further pursued, but it would be unnecessary. The Association have already taken it in hand. It has been presented by the distinguished gentlemen who compose your standing committee, with cogency of reason and fulness of learning, and will doubtless further engage your attention. I may be permitted to add, that for one, I concur in the general views of the committee as heretofore expressed. And I trust that the discussion of the subject will not cease, until, upon due and thoughtful deliberation, the Association shall see its way to the high ground on this subject, which I am sure all its members would be glad to be able to maintain.

In Mississippi, an important change has been made in the manner of summoning jurors. By the former law, all male citizens between the ages of twenty-one and sixty, who were householders or freeholders, were placed on the jury list. The recent law requires the supervisors to select for the jury list those persons only who are of good intelligence, sound judgment, and fair character.

In Ohio, an act regulating challenges of jurors has been adopted. It has been made a ground of challenge, among others, that a jurymen is of kin to an attorney in the case; or is a party to another action in the same court in which any attorney in the case is employed; or has served as a talesman in any court in the same county within twelve months.

° This somewhat enlarges the common law ground of challenge to jurors, but so far as it tends to diminish the employment of those exemplary citizens who are accustomed to attend court for the purpose of getting summoned in that capacity, the effect will undoubtedly be salutary.

In Nebraska, an act prohibits the summoning of any person as a juror oftener than once in two years.

Doubtless the most important legislation of the year is to be found in the adoption in New York of the penal and political codes. These statutes have been very long under consideration, and have enlisted in their preparation much labor, ability, and learning. They have given rise to great difference of opinion, and to a discussion in print, in which the argument on both sides has been exhaustively presented. Time allows me but a few words on the subject.

It is quite probable that codification may be found much better applicable to the subjects of these codes, in respect to which the law is already in large measure embraced in statutes, than to general jurisprudence. If applied to that subject, as is proposed by its advocates, I am unable, for one, to believe that the result can be fortunate. The origin of the common law was coeval with that of our race. Through all the subsequent centuries they have grown up together. It has come down to us with the blood that flows in our veins. Its history has been that, not merely of our jurisprudence, but of our principles of civil liberty, our institutions, our language, our literature, our religion. It has kept pace with civilization, and its triumphs have been the great victories of peace. All the best government, all the best justice the world has ever seen, have grown out of it.

Since *Magna Charta*, humanity, by the exertions of the Anglo-Saxon race, has made a larger and more real progress than in all previous time. Compare the history of those nations in which codes have prevailed, with that of England and America under the unwritten law. If it demonstrates anything, it establishes the superiority of a government and a justice founded

upon general principles, over that which reposes upon any collection of arbitrary written rules. The one has been the constant source of liberty and of human advancement; the other the engine of despotism and the harbinger of national decay.

The Mosaic code was superseded by the Christian religion. But the Author of Christianity devised no code to take the place of that which had failed. He left His work to stand upon those beneficent principles, which few and simple words were sufficient to announce, but which are comprehensive enough for all the vicissitudes of human life. Christianity was the first system of unwritten law. The common law was its legitimate and necessary outgrowth, and in its turn superseded, so far as our race is concerned, the second great code of the world, the Roman civil law. In my humble judgment, we might as well attempt to codify the application of the principles of Christianity, as of the principles of the common law. The process of growth and development that is essential to the one, belongs equally to the other.

Why should we part with a birthright that has proved so beneficent, for the sake of entering upon any doubtful experiment in a matter so vital? In the language of Burke, is not "the old cool-headed general law better than any deviation that can be struck out of the present heat?"

For one, I would not willingly consign to the dissecting table of the codifier, the noble and generous vitality from which all our generations have been nourished; nor consent to substitute in its place any cunningly devised skeleton that can be constructed out of its corpse.

This question has been discussed, as if the choice lay between our unwritten law and such a code of statute law as the best available learning and wisdom may laboriously devise. I do not so regard it. The proposed compilation, as such, may have all the excellence its friends claim for it. How long will it stand, and how and by whom is it likely to be changed? Of what material are our legislators generally composed? How are their members nominated, and upon what qualifications

chosen? By what considerations are they principally moved, and by what influences controlled? What is their competency on the whole, not merely to regulate the machinery by which the details of local government are carried on, but to prescribe and ordain for a great country the general law of the land? These questions answer themselves. We know that such bodies do not command public confidence; that their sessions are viewed with apprehension, and their adjournments with a feeling of relief. In several of the states whose legislation I have endeavored to review, resolutions appear in their session laws providing for the investigation of charges of bribery and corruption against their members. In others, new statutes aimed at such offences have been thought necessary. In others still, the newspapers that contain the official publication of the laws, contain on the same sheet denunciations of the corrupt and venal means by which, as it is declared, the passage of some of them was obtained. It is not for me to say to what extent these charges are true. In some states, fortunately, they have no application, but we know that in other states they are widely believed to be true.

Even in those legislatures whose integrity is unquestioned, the perusal of their labors is rarely calculated to inspire confidence in their wisdom. In the majority of them—happily not in all—the session laws exhibit hasty, inconsiderate, ill-advised legislation, framed to meet the real or supposed hardship of some particular case, to further some private end, or to reflect some temporary gust of popular feeling; they are characterized by a tendency to extend legislation to all manner of subjects, as well without as within the domain of municipal law, making a new statute the remedy for all ills and all inconveniences; by a looseness and ambiguity of expression that leads to endless uncertainty and litigation; and last and worst, by a fluctuation of purpose that deprives statute law of all stability, and alters, amends, reconstructs, and repeals its enactments from year to year, more rapidly than the courts can grope their way to a construction of the language in which they are couched.

It is to such law-makers as these that it is proposed to commit the whole body of our jurisprudence, in one vast statute, to be cut and carved, patched and plastered, from year to year, in a perpetual succession of change. It is not to be reasonably expected that after a few years' time, enough would remain of the polished and careful work of the original codifiers to be recognized by its authors. While the courts of justice, having no longer any voice or control in the development or growth of the law, will be reduced to the function of trying issues of fact, and ascertaining the meaning of doubtful statutes.

Much speculation has been brought to bear by ingenious writers on the prospective dangers of a republican system of government. The tendency to centralization, to executive usurpation, and toward military despotism, have been set out in colors which thus far, at least, have been but very partially realized. The mischiefs to be apprehended from indiscriminate, reckless, and corrupt legislation do not seem to have been anticipated. But experience is fast pointing out, that the country can endure all its other dangers with less apprehension than the action of its federal and state legislation inspires. It is already manifest, that the danger lies far less in the executive than in the legislative power. And it is not to be denied, meanwhile, that the wholesome checks which the framers of our constitution devised, and which constitute the only protection against arbitrary or unjustifiable enactments, have, by the growing reluctance of the courts to interfere with the legislative power, been suffered in no small measure, to crumble away.

Legislatures in this country are steadily grasping larger powers, and approaching nearer and nearer to omnipotence. It would seem to me, that the efforts of wise men should not be directed toward enlarging the sphere of legislation. To a certain extent it is necessary, and may be hoped to be useful and salutary. Its proper field is wide enough for the capacity of those concerned in it, and need not, indeed cannot, be diminished. But surely it will not be judicious or safe to turn the whole

law of the land into statutes, and to subject it to the dangerous process of their biennial revision.

I believe that he who lives to see that result accomplished, as its advocates predict that it will be, will see also the decay of the administration of justice, and of the profession to which we belong; and the gradual extinction of those principles of civil liberty which the history of the world shows to be inseparable from the common law.